

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 850 of 1996

in

SPECIAL CIVIL APPLICATION No 13134 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

KASHI EDUCATION TRUST

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Appearance:

MR DHAVAL DAVE for Appellants.  
MR BP GUPTA for Respondent No. 1  
MR VIJAY H PATEL for Respondent No. 2

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 11/04/97

ORAL JUDGEMENT

1. Admitted. Mr.B.P.Gupta, appears and waives and service of notice of admission on behalf of respondent no.1(original petitioner) and Mr.Vijay Patel waives service on behalf of Respondent no.2. In the facts and circumstances of the case, the matter is taken up to day for final hearing.

2. We have heard Mr.Dave, learned Assistant Government Pleader and Mr.H.M.Mehta, instructed by Mr.Gupta for Respondent No.1 school.

3. This appeal is directed against an order passed by the learned Single Judge on February 29, 1996 in Special Civil Application No. 13134 of 1993. By the said order, the learned Single Judge set aside the order passed by the State Government on October 18, 1993 by which the respondent authorities informed the school that there was no reason to reconsider the prayer of the petitioner and that no permission could be granted to run the school. The Single Judge was of the view that after the application was rejected by the Board on April 24, 1989 and dismissal of the appeal by the State Government on December 29, 1989, papers were placed before the Minister concerned and the Minister passed an order on August 23, 1989 by which recognition was given and grant was also ordered to be paid to the petitioner school from June 1991. According to the petitioner, thereafter, an order was received purported to have been passed by the authority on October 18, 1993 by which the school was informed that the appeal filed by the school was already dismissed as early as in December 1989 and there was no question of reconsideration of the case of the petitioner school as requested by the school vide its letter dt. April 26, 1993.

4. According to the learned Single Judge, when the order was passed by the Minister, it ought to have been implemented. Instead of doing that the authorities communicated to the petitioner-school through Section Officer of the Education Department that the prayer of the school was rejected. The said communication was inconsistent with and contrary to the order passed by the Minister and, therefore, it was quashed and set aside by allowing the petition.

5. It appears that when the matter was heard by the learned Single Judge, an affidavit was not filed nor relevant materials pointed out precisely by inviting attention of the court. Our attention was invited by the learned Assistant Government Pleader to various

endorsements made on the file from time to time. On the basis of the entire record, in our view, this LPA deserves to be allowed.

We are not expressing any opinion one way or the other since we are of the view that the matter requires to be remanded to the learned Single Judge by setting aside the order. The relevant record which has been pointed out to us requires to be shown to the learned Single Judge and the learned Single Judge will pass an appropriate order in accordance with law. We, therefore, allow this Letters Patent Appeal and set aside the order passed by the learned Single Judge. The learned Single Judge will now decide the petition in accordance with law on its own merits.

So far as grant is concerned, Mr.Mehta, states that the school will not insist for grant at this stage, but that in view of the fact that the learned Single Judge has passed order in favour of the school and that now again the learned Single Judge will decide in pursuance of the order passed by us it would be appropriate to permit the authorities not to take any coercive action against the respondent no.1 (Original petitioner) school till final hearing and disposal of the petition.

For the foregoing reasons, the appeal is allowed, the order passed by the learned Single Judge dt. February 29, 1996 is set aside and matter is remanded to the learned Single Judge to decide it in accordance with law. In the facts and circumstances of the case, there shall be no order as to costs.

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